

Forest Service, USDA

§ 251.87

through (a)(6). Such notice must inform the permit holder that, if mediation is desired, the permit holder must request mediation as part of the filing of an appeal.

[54 FR 3362, Jan. 23, 1989, as amended at 64 FR 37846, July 14, 1999]

§ 251.85 Election of appeal process.

(a) No decision can be appealed by the same person under both this subpart and part 217 of this chapter.

(b) Should a decision be reviewable under this subpart as well as part 217 of this chapter, a party who qualifies to bring an appeal under this subpart can elect which process to use for obtaining review of a decision, but in so doing, the appellant thereby forfeits all right to appeal the same decision under the other review process. However, a holder who waives the right to appeal under the provisions of 36 CFR part 217 may intervene pursuant to 36 CFR 217.6(b).

§ 251.86 Parties.

Only the following may participate in the appeals process provided under this subpart:

(a) An applicant who, in response to a prospectus or written solicitation or other notice by the Forest Service, files a formal written request for a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart and

(1) Was denied the authorization, or

(2) Was offered an authorization subject to terms and conditions that the applicant finds unreasonable or impracticable.

(b) The signatory(ies) or holder(s) of a written authorization to occupy and use National Forest System land covered under § 251.82 of this subpart who seeks relief from a written decision related to that authorization.

(c) An intervenor as defined in § 251.81 of this subpart.

(d) The Deciding Officer who made the decision being appealed under this subpart.

§ 251.87 Levels of appeal.

(a) *Decisions made by the Chief.* If the Chief of the Forest Service is the Deciding Officer, the appeal is to the Secretary of Agriculture. Review by the Secretary is discretionary. Within 15

calendar days of receipt of a timely notice of appeal, the Secretary shall determine whether or not to review the decision. If the Secretary has not decided to review the Chief's decision by the expiration of the 15-day period, the requester(s) shall be notified by the Secretary's office that the Chief's decision is the final administrative decision of the Department of Agriculture. When the Secretary elects to review an initial decision made by the Chief, the Secretary shall conduct the review in accordance with the first level appeal procedures outlined in this rule.

(b) *Decisions made By Forest Supervisors and Regional Foresters.* Only one level of appeal is available on written decisions by Forest Service line officers below the level of the Chief and above the level of the District Ranger. The levels of available appeal are as follows:

(1) If the decision is made by a Forest Supervisor, the appeal is filed with the Regional Forester;

(2) If the decision is made by a Regional Forester, the appeal is filed with the Chief of the Forest Service.

(c) *Decisions made by the District Ranger.* Two levels of appeal are available for written decisions by District Rangers.

(1) The appeal for initial review is filed with the Forest Supervisor.

(2) The appeal for a second level of review is filed with the Regional Forester within 15 days of the first level appeal decision. Upon receiving such a request, the Regional Forester shall promptly request the first level file from the Forest Supervisor. The review shall be conducted on the existing record and no additional information shall be added to the file.

(d) *Discretionary review of dismissal decisions.* Dismissal decisions rendered by Forest Service line officers pursuant to this part (§ 251.92) are subject to only one level of discretionary review (§ 251.100) as follows:

(1) If the Reviewing Officer was the Forest Supervisor, the Regional Forester has discretion to review.

(2) If the Reviewing Officer was the Regional Forester, the Chief has discretion to review.